

## CONTRACT LAW: the practical implications of a recent Supreme Court decision with respect to oral contracts

The recent decision of the UK Supreme Court in *Wells v Devani* [2019] UKSC 4 has important practical considerations for attorneys to keep in mind when advising upon the enforceability of oral contracts. It is considered to be a practical and sensible approach which in many instances will pour cold water on the hopes of contractors who wish to rely upon the use of imprecise words, or a lack of certain terms, to avoid their contractual obligations.

### The Background

*Wells v Devani* involved an oral contract between a property developer and an estate agent. The dispute hinged upon whether the parties had entered into a binding agreement that Mr. Devani, the estate agent, would be compensated by way of commission, for introducing a purchaser to Mr. Wells' property development. Mr. Devani maintained that in an initial telephone conversation with Mr. Wells, he had stated that his commission would be 2% plus VAT. The purchase completed but Mr. Wells refused to pay Mr. Devani his commission.

At first instance, the County Court found that there was an enforceable agreement between the parties, but since Mr. Devani had failed to comply with his obligations under the Estate Agents Act 1979 (EAA 1979) with respect to information that should have been provided to Mr. Wells, his recovery should be reduced by one third.

Mr. Wells appealed the decision. In allowing the appeal, the Court of Appeal concluded that despite Mr. Devani stating his commission rate during the telephone conversation, there was no discussion as to what would trigger the commission payment and therefore the agreement lacked the requisite clarity to be binding. Mr. Devani appealed to the Supreme Court.

## The Supreme Court Proceedings

The Supreme Court unanimously allowed Mr. Devani's appeal and dismissed Mr. Wells' cross-appeal on the EAA 1979 point. Lord Kitchin gave the lead judgment (with whom Lord Wilson, Lord Sumption and Lord Carnwath agree). Lord Briggs gave a concurring judgment.

Lord Kitchin noted that it is a matter of objective assessment as to whether the parties by their words and their conduct intended to create a legally binding contractual relationship. Where the words and conduct relied upon are too vague, the court may not be able to identify the terms of an agreement. However, the courts are reluctant to reach such a conclusion. Therefore, where it is found that the parties had the intention of being contractually bound and have acted on their agreement, an oral contract can be enforced. Lord Kitchin considered that in the present case it would naturally be understood that payment would become due on completion, from the proceeds of sale. Lord Briggs concurred, observing that while lawyers often speak of the interpretation of contracts as if concerned exclusively with the express words used, there are occasions, such as the present case, where the context in which the words are used tells you as much, or even more, about the essential terms of the agreement.

Given the foregoing, there was no need for the judge to imply a term into the agreement for it to have business efficacy, and therefore be binding. Lord Kitchin further added that had it been necessary, there would be no hesitation in holding that there was an implied term that payment would fall due upon completion of the purchase of the property by a person introduced by Mr. Devani.

## The practical implications:

This judgment confirms that:

1. before considering whether terms can or should be implied into a contract, those giving advice first need to establish the existence of a binding agreement and be aware that the implication of terms cannot be relied upon to 'make' the agreement for the parties (*Scancarriers A/S v Aotearoa International Ltd* [1985] 2 Lloyd's Rep 419);
2. that, per *Marks and Spencer v BNP Paribas*, questions of the implication of terms and interpretation of terms are not part of an indivisible process

Ultimately, there will be cases where an agreement is so vague and uncertain that it cannot be enforced. However, each case must be considered in light of its own particular circumstances. The court is able to ensure that oral agreements are binding and enforceable by utilising an objective test. As this judgment confirms, it will strive to do so rather than to allow an unscrupulous contractor to avoid their contractual obligations.

### Our team:

Questions around the enforceability of commercial contracts can be complex. It is wise to seek legal advice and clarity from the outset in order to avoid potential future disputes and preserve commercial relationships. If a dispute does arise, it is beneficial for a party to pinpoint the strengths and weaknesses of their legal position and engage in negotiations or litigation with that foresight.

Broadhurst LLC have extensive expertise in commercial dispute resolution and are able to provide help and advice at every stage of the commercial contracting process. For further information, please contact our office on 1 345 949 7237 or email [sally@broadhurstllc.com](mailto:sally@broadhurstllc.com).

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